
FINAL RECOMMENDATION FOR THE PROPOSAL TO REGULATE PROFESSIONAL COUNSELORS

January 4, 2006

Recommendation of the Joint Committee on Boards, Commissions, and Consumer Protection (Joint Committee)

ISSUE #1. Should California establish a licensing program for professional counselors?

Recommendation: *It has not been clearly established that there is sufficient consumer protection justification for this proposal and that this proposal meets the threshold for licensure (the potential for serious injury or death, or severe financial harm). Also, the proposal, as originally presented, was unclear with respect to exactly who would be regulated.*

Comments: The proposal before the Joint Committee for consideration creates a new category of master's level counseling professional to be regulated by the Board of Behavioral Sciences. Under AB 894's proposal, Licensed Professional Counselors (LPCs), like Marriage and Family Therapists (MFTs) and Licensed Clinical Social Workers (LCSWs), would be allowed to perform psychotherapy.

According to the sponsor, the California Coalition for Counselor Licensure (CCCL), the purpose of this proposal is to address the concern that "consumers seeking counseling services for issues that do not stem from marriage and family issues have no way to differentiate qualified Professional Counselors from untrained and unscrupulous practitioners offering counseling services." CCCL states that "harm occurs in a variety of ways, from those individuals defrauded or misled by untrained, self-titled career counselors promising results, charging exorbitant fees and not delivering what has been promised, to children being molested by residential treatment facility counselors, to severely traumatized children, who could not be provided with necessary trauma resolution treatment because the identified provider of those services was not license eligible under current legislation."

CCCL provides various examples of serious harm by counselors not currently licensed in California, including:

"Physical and emotional harm have occurred in instances where children have been sexually abused by counselors employed by agencies, such as group homes or camps. In Orange County, a youth counselor was arraigned on charges of continual sexual abuse against a minor from 1990 to 1997. Another case, reported in the Los Angeles Times, describes lasting emotional damages caused to several boys with whom their group home counselor allegedly initiated sex acts. Legal consequences to consumers occur in situations such as described by the Los Angeles Times, on 8/17/02 in which a Los Angeles minister is accused of advising college-bound students to falsely claim they were orphans on financial aid applications. The

CCCL recently received an email message from a 'Devastated Mom,' requesting a code of ethics regarding confidentiality for youth counselors. The truth is that, if this youth counselor has not been trained as a Professional Counselor and/or if he is not a member of a professional counseling association, he may not abide by a code of ethics and standards of practice."

However, the examples of harm provided by the sponsor are of entities that, under this proposal, are exempt settings (e.g., schools, government entities and nonprofit institutions) and could continue to employ unlicensed counselors.

Moreover, this proposal does not mandate that all counselor positions be filled by a LPC, but instead creates another category of master's level counselors eligible for employment in positions that require a licensed individual (positions currently held only by MFTs or LCSWs). Therefore, for example, in the case of the mother concerned with a code of ethics for youth counselors, and the Orange County case that involved a youth counselor volunteering at a church, it is unclear how this proposal would have provided consumer protection unless the youth counselor positions were filled by LPCs (which would not be required by this proposal).

In short, because this proposal does not necessitate the employment of LPCs in all California counseling positions, and because unlicensed counseling providers are less expensive to employ, it is safe to assume that, under this proposal, large numbers of unlicensed counselors will continue to be employed in exempt and nonexempt settings.

Further, this proposal would not preclude people from holding themselves out to be a "counselor"; the proposal only applies to the use of the LPC title and performing psychotherapy. Therefore it is unclear how this proposal would prevent the asserted harm to consumers seeking the broad range of counseling services available in California.

Finally, the proposal as originally presented to the Joint Committee was unclear regarding who it intended to regulate as a LPC. Amendments have been proposed by the sponsor to address the concerns and clarify who is to be included for regulation. Specifically, the amendments state that this proposal will not apply to a person who does not practice or engage in professional counseling, practice or engage in psychotherapy, use the title of professional counselor, or represent themselves as a professional counselor.